

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Moyer et al.
Patent No.: 7,695,901
Application No.: 09/912,072
Filed: July 24, 2001
For: *Identification of Poinsettia Cultivars*

Confirmation No.: 3267
Group Art Unit: 1634
Examiner: S. Bausch

Date: April 13, 2010

Mail Stop Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT

Sir:

Pursuant to 37 C.F.R. § 1.705(d), Patentee submits this request for revision of patent term adjustment (PTA) for the above-referenced U.S. Patent No. 7,695,901 ('901 patent), issued April 13, 2010. Patentee respectfully submits that the '901 patent is entitled to an additional 215 days of patent term adjustment. Accordingly, reconsideration of the final PTA calculation to increase total PTA from 87 days to 302 days is respectfully requested.

No fee is believed due with this Request because the incorrect PTA is due to an administrative error. However, the Commissioner is authorized to charge any deficiency or credit any overpayment to Deposit Account no. 50-0200.

Pursuant to 37 C.F.R. § 1.705(b)(2) provided below is the following statement of facts.

"A" Delay

A first PTO action was due on or before September 24, 2002 (the date that is fourteen months after July 24, 2001, the date on which Patentee filed the application under 35 U.S.C. § 111(a)). The PTO mailed the first non-final Office Action on September 9, 2003, thereby according a PTO delay of 350 days. Patentee does not dispute the PTO's calculation for this "A" delay from September 24, 2002 (the day after the date that is fourteen months after the date on

which Patentee requested national examination to begin under 35 U.S.C. § 371(f)), to September 9, 2003. See 37 C.F.R. §§ 1.702(a) and 1.703(a)(1).

A reply in compliance with § 1.113(c) was due on February 10, 2004 (the date that is on the day after the date that is four months after October 9, 2003, the date on which patentee filed a response). The PTO mailed a non-final Office Action on March 10, 2004, thereby according PTO delay of 30 days. Patentee does not dispute the PTO's calculation for this "A" delay from February 10, 2004 (the day after the date that is four months after the date on which Patentee filed a response) to March 10, 2004. See 37 C.F.R. §§ 1.702(a) and 1.703(a)(3).

An issued patent was due on April 9, 2010 (the period beginning on the day after the date that is four months after the date the issue fee was paid (April 8, 2010) and all outstanding requirements were satisfied and ending on the date a patent was issued). The patent issued on April 13, 2010, thereby according PTO delay of 4 days. Patentee does not dispute the PTO's calculation for this "A" delay from April 9, 2010 (the day after the date that is four months after the issue fee is paid) to April 14, 2010. See 37 C.F.R. §§ 1.702(a) and 1.703(a)(6).

"B" Delay

The present application was filed on July 24, 2001. The period beginning on July 25, 2004 (the day after the date that is three years after July 24, 2001, the date the application was filed) and ending May 23, 2005 (the date a Request for Continued Examination was submitted) is 302 days in length. The PTO calculated 302 days of "B" delay for this patent. Patentee does not dispute the PTO's calculation for this "B" delay from July 25, 2004 (the day after the date that is three years after July 24, 2001, the date the application was filed) to May 23, 2005. See 37 C.F.R. §§ 1.702(a) and 1.703(b).

Overlap of "A" and "B" Delay

As detailed above, "A" delay accumulated during the following period:

September 24, 2002 to September 9, 2003.

February 10, 2004 to March 10, 2004

April 9, 2010 to April 14, 2010

As detailed above, "B" delay accumulated during the following period:

July 25, 2004 to May 23, 2005.

There is no overlap in the "A" delay and the "B" delay.

"C" Delay

The PTO originally calculated 337 days of "C" delay for this patent on April 30, 2008. The PTO recalculated PTA for the '901 patent and on February 10, 2010 removed the 337 days as being incorrectly accorded to the '901 patent (*See*, Letter Regarding Patent Term Adjustment issued by the PTO and mailed on February 17, 2010 (hereinafter "the Letter")). In addition, the Letter stated that applicant was also incorrectly accorded an additional 215 days for Office delay and this too was deducted on February 10, 2010 from the PTA for the '901 patent. However, Patentee notes that while the 337 days that were deducted from the PTA of the '901 patent (on February 10, 2010) are counterbalanced by 337 days accorded to the '901 patent (April 30, 2008), the 215 days of PTO delay deducted from the '901 patent are not counterbalanced by 215 days accorded to the '901 patent. It appears that the 215 days originally accorded to the '901 patent (on June 2, 2009) was automatically corrected and removed when the after issue PTA was calculated by the PTO but in addition a further 215 days were deducted on February 10, 2010. Thus, Patentee submits that the 215 days of PTA deducted from the '901 patent on February 10, 2010 is in error. Consequently, Patentee disputes this deduction of 215 days from PTA for the '901 patent.

Applicant Delay

Applicant delay for the present application constituted 91 days from June 10, 2004 to September 9, 2004; 86 days from February 26, 2005 to May 23, 2005; 89 days from November 10, 2005 to February 7, 2006; 94 days from February 8, 2006 to May 12, 2006; and 25 days from November 2, 2006 to November 27, 2006. Thus, the total Applicant delay constituted 385 days. Patentee does not dispute the PTO's calculation for Applicant delay.

Terminal Disclaimer

This patent is not subject to a terminal disclaimer.

Conclusion


In consideration of the events described above, the PTA calculation of a total of 87 days for this patent is believed to be incorrect. As such, Patentee respectfully requests recalculation of the PTA for this patent in the following manner:

- 1) Total PTO delay should be calculated as 686 days (i.e., the sum of 384 days of "A" delay and 302 days of "B" delay);
- 2) Total Applicant delay should be calculated as 384 days; and
- 3) Total PTA should be calculated as **302 days**.

Accordingly, Patentee requests that the deduction of 215 days from the '901 patent be removed and the '901 patent be accorded the correct total PTA of 302 days.

As noted above, no fee is believed due with this Request because the incorrect PTA is due to an administrative error. However, the Commissioner is authorized to charge any deficiency or credit any overpayment to Deposit Account no. 50-0200.

Respectfully submitted,

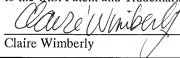


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CERTIFICATION OF ELECTRONIC TRANSMISSION

I hereby certify that this correspondence is being transmitted via the Office electronic filing system in accordance with § 1.6(a)(4) to the U.S. Patent and Trademark Office April 13, 2010.


Claire Wimberly